

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of:

Administration of the North  
American Numbering Plan)  
)  
)  
)CC Docket No. 92-237  
Phases One and Two

COMMENTS OF  
MCCAW CELLULAR COMMUNICATIONS, INC.

McCaw Cellular Communications, Inc. ("McCaw") respectfully submits its comments regarding the Notice of Proposed Rulemaking ("Notice") in the above-captioned proceeding.<sup>1</sup> As discussed herein, McCaw supports the Commission's proposal to establish a new, non-governmental NANP Administrator and a separate policy entity subject to Commission oversight.

I. INTRODUCTION

As McCaw detailed in its earlier filings in this docket, control of NANP administration by Bellcore and the BOCs has raised serious competitive issues and given short shrift to the needs and concerns of wireless service providers.<sup>2</sup> Moreover, development of NANP policy

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<sup>1</sup> FCC 94-79 (released April 4, 1994).

<sup>2</sup> See Comments of McCaw, CC Docket No. 92-237, filed Dec. 28, 1992; Reply Comments of McCaw, CC Docket No. 92-237, filed Feb. 24, 1993. Recently, NANPA has taken steps to improve its treatment of wireless carriers. Many of the central office code administrators, however, continue to use their control of those resources to unfairly blame wireless carriers for number exhaust and to implement relief plans that advantage wireline carriers and impose competitively significant burdens on the wireless industry.

through unaccountable industry bodies has been highly contentious and -- even with centralization of numbering issues in INC<sup>3</sup> and FNF<sup>4</sup> -- agonizingly slow and unproductive.

Against this background, the reforms proposed by the Commission are plainly necessary to assure the development of flexible, pro-competitive numbering policies and the non-discriminatory assignment of critical numbering resources. Indeed, McCaw has long believed that the NANP should be administered by a neutral party overseen by the Commission, and that numbering policy should be developed through an open, yet structured process. Consequently, McCaw welcomes the Commission's proposals and urges their prompt adoption, as discussed in more detail below.

II. THE COMMISSION SHOULD REFORM THE NANP ADMINISTRATION AND POLICY DEVELOPMENT PROCESS TO PROMOTE RESPONSIVE, EQUITABLE, AND ACCOUNTABLE DECISION-MAKING.

A. The Commission, in Conjunction with Other World Zone 1 Regulators, Should Promptly Designate a New NANP Administrator with Broad Responsibilities.

McCaw fully supports the Commission's proposal to promptly designate a new, non-government NANP administrator, which would be "subject to [FCC] oversight but also separate from this Commission and not closely identified with any particular industry segment."<sup>5</sup> By

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<sup>3</sup> The Industry Numbering Committee, which resides within ICCF, acts as an umbrella organization for developing numbering-related guidelines and other relatively routine practices and procedures.

<sup>4</sup> The Future of Numbering Forum, originally established by Bellcore to provide advice regarding the Long-Term Numbering Plan, now focuses on issues of NANP management.

<sup>5</sup> Notice at ¶ 18.

establishing the new NANPA itself (in cooperation with other WZ1 regulators) -- rather than allowing it to be selected by an industry organization -- the Commission can avoid questions regarding the loyalties of the entity and the source of its authority.<sup>6</sup> The Commission also can ensure that its designated administrator would be adequately staffed and funded and act responsively.<sup>7</sup>

In order to eliminate existing competitive concerns and assure that implementation of policy is consistent and centralized, the new NANPA should be tasked with administering all aspects of the numbering plan. For example, in addition to discharging the current responsibilities of NANPA, the new entity should assign central office codes,<sup>8</sup> administer numbering-related data bases, and handle requests for all other numbering resources, including Signalling System 7 point codes, public switched data service numbers, and interchangeable NPAs.<sup>9</sup>

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<sup>6</sup> As the Commission itself notes, existing entities such as NECA are too closely identified with a specific industry segment to present the appearance of impartiality. *Id.* at ¶ 15. Because NECA is by definition an exchange carrier association, it would need to be completely restructured, reorganized, and restaffed before it even could be considered to perform NANPA functions. ATIS should be disqualified for similar reasons. Although its Board has been expanded, its charter -- to seek industry consensus solutions on telecommunications standards and development of operational guidelines -- remains unchanged and unsuitable to the role of NANPA. The role ATIS plays is important, and should not be confused with a disinterested, neutral ministerial function.

<sup>7</sup> *Id.* at ¶ 16.

<sup>8</sup> *Id.* at ¶ 29. As McCaw previously has detailed, administration of CO codes by the dominant LEC in each geographic region has caused significant hardships to wireless providers seeking to compete with those LECs' mobile service affiliates. Centralized assignment of CO codes will assure non-discriminatory and consistent treatment of all code requests, while permitting flexibility for the NANPA to take into account local conditions such as the imminence of NPA exhaust.

<sup>9</sup> *Id.* at n.39.

While the new NANPA conceivably could report to the INC, or to ATIS (which sponsors INC), McCaw believes the NANPA should report directly to the Commission.<sup>10</sup> Direct reporting to the Commission will place the NANPA in an environment that will support administration of numbering assignment guidelines and other policies consistently with the public interest. In addition, elimination of an intermediate level of review (such as having the new NANPA report to a numbering policy organization, which would in turn report to the Commission) would avoid unnecessary delay and ensure that the Commission is made aware of any problems as soon as possible. Finally, direct reporting to the FCC is preferable to reporting to ATIS because ATIS plays a significant role in sponsoring industry consensus processes, where presenting and supporting an individual company's position on issues is standard practice. Placing the new NANPA within that structure would undermine the paramount objectives of separating ministerial functions from policy development and risk destroying the neutrality and independence of the administrative entity.<sup>11</sup>

Any disputes regarding the eligibility of a particular entity for a numbering resource that cannot be resolved through the existing consensus process should be handled expeditiously by the Commission's staff.<sup>12</sup> Commission resolution of such disputes will produce prompt action, which is essential in order to avoid competitive inequities. Furthermore, making the

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<sup>10</sup> Alternatively, NANPA could report to a WZ1 Regulatory Oversight Committee composed of representatives from the FCC and Canadian and other WZ1 regulators.

<sup>11</sup> Of course, if ATIS ultimately sponsors the Numbering Policy Organization, interaction between NANPA and that Organization would be necessary to, for example, clarify the intent of assignment guidelines in particular circumstances. Such interaction is different, however, than an oversight relationship.

<sup>12</sup> McCaw will suggest procedures for resolving policy disputes in the section of these Comments dealing with the Policy Organization.

Commission ultimately responsible for deciding allocation and assignment disputes would properly limit the potential liability of the NANPA, and thereby maximize the number of qualified parties that may wish to seek NANPA responsibilities.

Against this background, McCaw recommends that the Commission adopt its proposal to promptly select a non-government NANPA. In addition, the Commission should establish a dedicated numbering task force of two or three staff members to oversee that entity's operations and handle all disputes related to number assignment. The dedicated numbering staff should be free to employ whatever techniques will produce the most rapid resolution of particular disputes, including mediation, expedited paper proceedings, and closely supervised settlement conferences.<sup>13</sup>

**B. The NANP Policy Organization Should Be Actively Overseen  
by the FCC and Other WZ1 Regulators.**

In the time since the Commission initiated this proceeding, the rationale underlying establishment of an NANP Policy Organization has shifted. The responses to the Notice of

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<sup>13</sup> As the Commission notes, it has the authority to charge regulatory fees to recover its costs in overseeing the NANPA. See Notice at ¶¶ 32, 33. The costs of the new NANPA itself -- which should not be much more than ten million dollars per year, based on McCaw's understanding of Bellcore's current budget and the addition of responsibilities to administer CO codes and numbering data bases -- could be recovered through a surcharge. For example, an extremely small addition to an existing pool should be more than adequate to fund the NANPA entity. Before taking this approach, however, the Commission would have to assure that all parties benefitting from number administration pay into the fund. (For example, the TRS funding obligation extends only to the interstate services of telecommunications common carriers, and does not include end users (who may obtain numbering resources), private carriers, and non-U.S. entities.)

McCaw does not believe it is appropriate to rely on either voluntary contributions or surpluses from other funds. Voluntary funding, as noted by the Commission, may not reliably yield sufficient money (Notice at ¶ 35), and may compromise the impartiality of the NANPA. Using surpluses appears inequitable, since the parties paying into other funds will not represent the full range of entities benefitting from NANPA administration.

Inquiry almost uniformly complained of the plethora of formal and informal organizations considering various numbering-related issues.<sup>14</sup> Consequently, several commenters urged the Commission to institute a centralized numbering policy council.

In the past year, the industry has established INC and FNF. As a result, earlier concerns about fragmented decision-making and forum shopping have been somewhat ameliorated. At the same time, however, a fundamental problem remains: instead of a multitude of entities that are unable to resolve controversial issues, there are now two entities that are unable to resolve controversial issues.

In short, the existing industry numbering organizations are capable of developing routine assignment guidelines and principles based on existing policy without active Commission intervention. Nonetheless, with respect to controversial policy issues (such as those concerning the eligibility of specific industry segments for particular resources), those entities are essentially rudderless. As explained in the Notice, "no regular mechanism appears available to decide issues or resolve disputes when no consensus or other agreement can be reached."<sup>15</sup>

There are several options available to the Commission for remedying this deficiency in the policy development process. Each option has advantages and disadvantages:

- The Commission could develop numbering policy itself through notice and comment rulemaking. This option would assure that all interested parties can participate in the process, and would give the resulting policies the force of law. Nonetheless, the rulemaking approach has significant drawbacks. Most notably, it eliminates the opportunity for informal,

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<sup>14</sup> Notice at ¶ 21 & n.29.

<sup>15</sup> Id. at ¶ 24.

productive give-and-take. It also mandates Commission intervention even where industry groups could achieve consensus on their own, possibly delaying the adoption of relatively non-controversial policies. And, it arrogates to the Commission authority to adopt policies that may affect other nations within WZ1.

- The Commission could establish a formal Federal Numbering Advisory Committee. An Advisory Committee complying with the requirements of the Federal Advisory Committee Act would assure procedural due process by conducting its business in public, reporting directly to the Commission, and relying on the Commission to ratify its policy recommendations. However, an Advisory Committee, while theoretically representative, would not be open to all affected parties. That is, to keep the Committee to a manageable size, the Commission would have to name representatives from various industry segments, rather than allowing individual companies (which may have unique interests) to participate in the process as equals. In addition, the Advisory Committee approach might add a layer of delay: any policies recommended by the Committee -- even if non-controversial -- would have to be put out for comment by the FCC before being formally adopted.

- A preferred approach might be to modify the current industry consensus process to enhance the likelihood of reaching timely resolution of controversial issues. The principal problem with existing numbering policy bodies is that the leadership is of necessity ineffective. Whatever entity acts as chair has an economic interest in the outcome of the debate. Consequently, it would be inadvisable to allow the chair to cut off discussion, direct the discussion in certain directions, or establish deadlines for action.

McCaw believes this problem may be addressed by designating a member of the Commission's staff -- one of the individuals on the numbering task force -- to act as chair of whatever entity is tasked with developing numbering policy, in cases where normal procedures do not yield consensus.<sup>16</sup> The chair would not have a vote, and would not be empowered to rule out particular alternatives. He or she would, however, be allowed to cut off unproductive discussion, establish deadlines for final resolution of an issue, and attempt to broker a resolution by pointing out the strengths and weaknesses of competing positions and offering possible alternatives.<sup>17</sup>

As a backstop, any issue not resolved within a specified period (e.g., a year or such earlier time as selected by the chair) could be referred to the Commission for resolution using negotiated rulemaking procedures.<sup>18</sup> Such procedures would allow all affected parties an opportunity to participate on the negotiated rulemaking committee, preserving the openness of the policy development process.<sup>19</sup> At the same time, it should produce more rapid resolution of difficult issues than if traditional notice and comment procedures were followed.

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<sup>16</sup> McCaw does not currently have a view on whether the Commission should designate a restructured INC as the new Numbering Policy Organization, or whether a new entity should be selected. Whatever entity is chosen, however, it should be open to all interested parties, rather than just representative, must solicit participation by all World Zone 1 regulators, and must be the only forum for developing numbering policy.

<sup>17</sup> This approach would have the advantage of giving the Commission first-hand knowledge of problems as they develop, rather than relying on subsequent reports from interested parties.

<sup>18</sup> See 47 C.F.R. § 1.18 (1993); Initial Policy Statement and Order, 56 Fed.Reg. 51178 (1991), amended, 57 Fed.Reg. 32181 (1992).

<sup>19</sup> Once again, participation by other WZ1 regulators in the negotiated rulemaking process would be essential.



McCaw submits that this approach offers several advantages over either an Advisory Committee or use of full FCC rulemaking procedures to develop policy. It preserves the benefits of the consensus process -- open participation and free-ranging discussion -- and avoids the need for regulatory involvement in non-controversial matters. At the same time, it adds structure to the current process and assures that issues not susceptible to consensus will promptly be identified and resolved using procedures that accord force of law to the final rules.<sup>20</sup>

### III. CONCLUSION

For the foregoing reasons, McCaw urges the Commission promptly to designate a non-governmental entity to serve as the new NANP Administrator. That entity should report directly to the FCC, and any disputes regarding numbering assignments should be resolved by designated members of a Commission-staffed numbering task force. In addition, the Commission should identify an entity to serve as a Numbering Policy Organization. That Organization should be open to any interested party. Less controversial numbering-related matters could continue to be addressed as they are in INC today, with industry representatives as moderators. More controversial issues, such as those concerning entitlement to NANP resources, should be resolved through the same open process, but chaired by a member of the

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<sup>20</sup> A Numbering Policy Organization structured along these lines would not raise difficult funding issues. Parties choosing to attend meetings of the Organization could pay their own way. The Commission's costs could be recovered through fees, as explained in the Notice and in note 9, *supra*. The costs of obtaining meeting space, secretarial services, duplicating, faxes, and so forth could be rolled into the NANPA's budget.

Commission's numbering task force. Issues upon which consensus cannot be reached using this process should be resolved by the Commission using negotiated rulemaking procedures.

Respectfully submitted,

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